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Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946

No. [redacted] 133

JACOB L. ZELLAN,
*Petitioner,*

vs.

HARRY P. GIDDINGS,
*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PAUL J. SEDGWICK,
*Attorney for Respondent.*

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OCTOBER TERM, 1946

No. 1490

JACOB L. ZELLAN,
*Petitioner,*

vs.

HARRY P. GIDDINGS,
*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

### STATEMENT OF CASE

The accident and injury which occasioned the suit occurred on September 7, 1945, about 1:00 o'clock A. M., on private property of The Crossroads Tavern, Bladensburg, Prince George County, Maryland. Contiguous thereto is the Dixie Pig Restaurant. Petitioner and the Respondent were guests, respectively, of these two taverns and both had indulged in intoxicating liquors. Each had his automobile parked on the particular tavern property; each had left his tavern preparatory to driving off. Respondent

had started to drive along in a narrow space between rows of parked cars and in making a right turn toward an exit, the left end of his front bumper struck the lower corner of the right side door of petitioner's automobile, which petitioner was then opening, and the calf of petitioner's left leg was caught in between and lacerated.

The original Complaint charged negligence and prayed for compensatory damages. Respondent's Answer denied negligence and asserted contributory negligence. Upon the issues thus joined the case came on for trial before a Court and Jury. At the close of all the evidence and after the parties had rested their cases the Court, over respondent's objection, granted petitioner's motion to amend his Complaint to include an additional ad damnum clause for exemplary damages, raising the amount of the suit from $50,000.00 to $100,000.00 (i.e. $50,000.00 compensatory damages; $50,000.00 punitive damages).

The respondent, thereupon, and over strenuous objection, was called back to the stand by petitioner's counsel and cross examined concerning his assets, financial worth and related items. And, notwithstanding that the petitioner owns and operates large apartment houses and properties, and has financial worth and income many times that enjoyed by the respondent, the jury, without proper instruction from the Court, returned a verdict for $13,311.00, of which $10,000.00 was punitive damages, in favor of the petitioner and against the respondent.

Respondent appealed, assigning fourteen errors, and contested the verdict and judgment insofar as the $10,000.00 punitive damages were concerned; the respondent otherwise would have been content with the verdict awarding $3,311.00 actual damages. The United States Court of Appeals for the District of Columbia reversed and remanded the case for a new trial in accordance with

its Opinion (R 103). Petitioner filed for a rehearing in the aforestated Court, which was denied. Petitioner now has petitioned this Court for a writ of certiorari, to which petition the respondent now files these Objections.

## REASONS FOR DENYING PETITION

1. The United States Court of Appeals for the District of Columbia did not, in this case, render a decision in conflict with the decision of another circuit court of appeals on the same manner.

2. Said Court did not decide, an important question of local law in a way in conflict with applicable local decisions.

3. There is no question of federal law involved calling for action by this Court.

4. The aforestated Court did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

5. The aforestated Court applied the Law of Maryland to the case, which is in accordance with law, inasmuch as the particular accident in question occurred in Maryland.

6. Other reasons call for a denial and dismissal of the Petition and are set forth herein.

While the respondent reserves all right to argue all of the matters set forth in the Petition, including his "Questions Presented," "Specification of Errors to be Urged," and his "Reasons for granting the Writ," it does not appear necessary or proper to discuss all of them when they formed no part of the decision and were not considered by the Justices of the United States Court of Appeals for the District of Columbia. It is true the

respondent, in the appeal proceeding, asserted fourteen assignments of error on the part of the Trial Justice, but the appellate Court found it necessary to consider but one of them and that was sufficient to warrant a reversal of the District Court judgment. The Opinion (R 103) recites:

> "On this appeal appellant assigns fourteen separate alleged errors occurring in the trial. But in the view we take of the case it is necessary to notice but one of these."

Therefore, and without admitting them, the respondent submits to this Court that the matters asserted in the Petition were neither considered, nor ruled upon, by the United States Court of Appeals for this District.

The case involved here is a simple one: there was an automobile accident which occurred in the State of Maryland, a man was injured, the Laws of that State governed and fixed the rights and liabilities of the parties hereto, the trial court omitted to apply the law of Maryland and an erroneous charge was given the Jury.

On appeal, the United States Court of Appeals reversed the judgment of the trial court. In its Opinion (R 103) the appellate court reviewed the Maryland cases on the subject, as to which there can be no possible contradiction or meritorious debate.

The Maryland Courts have considered the matter fully and the policy of that State has become fixed. That Wisconsin, or other states, may follow a different rule is of no concern here. Maryland has no law supporting the comparative negligence rule (followed in Wisconsin and, perhaps, other states). That petitioner urges a Wisconsin case is of no moment. In a very recent case, that of *Davis v. Gordon,* cited here, the Court of Maryland said,

> "The other question, however, the instruction that the jury may award punitive damages, is a new one in this State in cases of automobile accidents. Here

> we have no rule of comparative negligence. If the defendant is negligent, the negligence resulting in injury, and the plaintiff has not contributed to the injury, the latter is entitled to recover in full for the damage and pecuniary loss. The fact that the act of negligence may be slight and not gross makes no difference. The test is, the damage done. We have many rules of the road all designed and intended to promote the public safety. They have severe penalties for their violation whether there is an accident or not. If all drivers and all pedestrians observed these rules there would not be any accidents.
>
> "The rules of the road are far more effective than any inflammatory verdicts in making our streets and highways safe for travel. The fear of arrest is more of a deterrent than a verdict in a civil case for damages.

While the Opinion discusses other considerations, there can be no doubt of the fact that the appellate court's decision is in accordance with law.

The petitioner would like this Court to take a different view, either of the evidence or of the law of Maryland. Petitioner proved to the satisfaction of the jury negligence on the part of respondent and actual damage to himself of $3,311.00. Although a very wealthy man himself and notwithstanding that he engaged in the same conduct (imbibing in intoxicating liquors) as that complained of by him against the respondent, petitioner wishes to enjoy the $10,000.00 punitive damages awarded him by a jury improperly charged as to the law. There is no support in law for the verdict and it represents manifest and gross injustice and oppression.

In effect the petition is requesting this Court to review the evidence and proceedings with the view of having this Court draw an inference different than that drawn by the appellate Court and, perhaps, reach a different conclusion. Also, it asks this Court to say what the law of Maryland

should be. It is believed this Court will not allow the Writ under such circumstances.

In the case of *General Talking Pictures Corp. v. Western Electric Company*, 304 U. S. 175, 58 S. Ct. 849, it was held that

> "The Supreme Court will not grant a writ of certiorari merely to review the evidence or inferences drawn from it."

In the case of *Ruhlin vs. New York Life Insurance Company*, 304 U. S. 202, 58 S. Ct. 860, this Court held that

> "As to questions controlled by state law, conflict among Federal Circuit Courts of Appeals is not of itself a reason for granting a writ of certiorari by the Supreme Court of the United States, as the conflict may be merely corollary to a permissible difference of opinion in the state courts."

## CONCLUSION

In view of the facts and circumstances present in this cause and for the reasons stated it is respectfully submitted that the Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia should be denied and dismissed.

Respectfully submitted,

PAUL J. SEDGWICK,
*Attorney for Respondent.*